

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

Richard Katz

Plaintiff

Case No.: **3:15-cv-01187**

v.

NATIONAL BOARD OF MEDICAL EXAMINERS (NBME)

3750 Market Street

Philadelphia, PA 19104

and

FEDERATION OF STATE MEDICAL BOARDS (FSMB)

400 Fuller Wiser Road, Suite 300

Euless, Texas 76039-3855

Defendants

SECOND MOTION FOR APPOINTMENT OF COUNSEL

NOW COMES plaintiff Richard Katz appearing pro se in the above captioned matter moves for an Order of this Court to grant Second Motion for Appointment of Counsel.

1. In this action, pro se plaintiff Richard Katz has alleged discrimination in testing accommodations by defendants the National Board of Medical Examiners (NBME) and the Federation of State Medical Boards (FSMB). Katz has alleged violations of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 and § 504 OF THE REHABILITATION ACT OF 1973, [AS AMENDED, 29 U.S.C. § 794]. Section 504 of the Rehabilitation Act specifically

prohibits discrimination against individuals with disabilities in programs receiving federal funds. NBME and FSMB are both recipients of federal funds.

2. In considering a motion for appointment of counsel the court must first “determine that the plaintiff’s claim has some merit.” *Parham v. Johnson*, 126 F.3d 454, 457 (3d Cir. 1997). To determine the appropriateness of appointing counsel, courts in the Third Circuit consider the framework established in *Tabron*. See 6 F.3d at 156-57. Under the *Tabron* framework, the Court must first assess “whether the claimant’s case has some arguable merit in fact and law.” If the applicant’s claim has some merit, the Court then considers the following factors:
 - (1) the plaintiff’s ability to present his or her own case;
 - (2) the complexity of the legal issues;
 - (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigation;
 - (4) the amount a case is likely to turn on credibility determinations;
 - (5) whether the case will require the testimony of expert witnesses;
 - (6) whether the plaintiff can attain and afford counsel on his own behalf.”

Katz satisfies all of the *Tabron* Criteria as stated above.

- (1) Plaintiff has struggled to defend his own case and his mental resources have been exhausted and taxed in so doing.
 - (2) The issues in this case have been proven to be complex at best and will require guidance from a trained attorney.
 - (3) Plaintiff will be limited in his ability to pursue an investigation due to his lack of knowledge in the legal process.
 - (4) An attorney will be better able to gauge the credibility of defendants; “it is more likely that the truth will be exposed where both sides are represented by those trained in the presentation of evidence and in cross examination.” *Abulkhair v. U.S. Postal Serv.*, No. 13-7796, 2014 WL 1607379, at *4 (D.N.J. Apr. 22, 2014).
 - (5) This case will certainly require the testimony of expert witnesses.
 - (6) It has already been determined by the Court in the September 16, 2015 Order that plaintiff is indigent.
3. It bears noting that the current motion represents Katz’s second application to this court for appointment of counsel—his other attempt was denied in the September 16, 2015 Order because it was deemed by the Court that Katz had not made a diligent enough effort to secure counsel. Katz had consulted a total of five attorneys between December 2013 and December 2014 as documented in the attached log entitled ‘Attorney Contacted.’ This should have been sufficient preliminary attempt to secure counsel while the logistics of this lawsuit were being explored.
4. Katz has made an exhaustive effort to secure representation that his finances would accommodate. He has contacted virtually all advocacy groups in the United States for people with disabilities, limited financial resources and violation of Civil Rights including the, NAACP, The

Disability Rights Network, North Penn Legal, The Arc, and many other groups. All declined to provide support as they do not have the available resources or the case was too complex for them and was outside their focus or areas of practice. In addition he has emailed a total of thirty or more attorneys specializing in Civil Rights and Education Law. While many showed interest, none of these attorneys agreed to take on a case of this complexity on a contingency or pro bono basis.

WHEREFORE the Movant Prays for the following relief:

That plaintiff's claims have merit, and appointment of Counsel is warranted meeting the Tabron factors thereby granting Motion for Appointment of Counsel.

Respectfully submitted,

Richard Katz

3364 Parker Lane

East Stroudsburg, PA

18301

Pro se

/s/ Richard Katz

Richard Katz

CERTIFICATE OF SERVICE

I Richard Katz certify that a true and correct copy of the foregoing Motion to Appoint Counsel has been electronically delivered to:

Michael Sacks

Hamburg & Golden, P.C.

1601 Market Street Suite 3310

Philadelphia PA 19103-1443

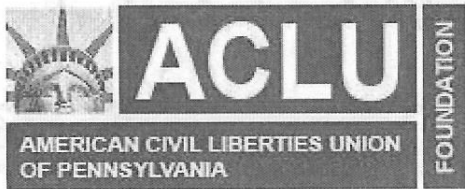
Date: December 1st, 2015

/s/ Richard Katz

Richard Katz

ATTORNEY CONTACTED	Law Firm	Decision Yes/No/ N/A	Date
1. Sasha Samberg-Champion	Relman, Dane & Colfax PLLC	No	11/30/2015
2. Marielle Macher*	Community Justice Project	No - Referred	11/02/2015
3. James P. DeAngelo	McNees Wallace & Nurick LLC	No	10/19/2015
4. Ira A. Burnim	Bazelon Center	No	10/19/2015
5. Maricela Rosales	Disability Rights Legal Center	No	10/28/2015
6. Jasmin Bailey	American Association of People with Disabilities	No	10/28/2015
7. Richard J. Landau	RJ Landau Partners PLLC	No	10/27/2015
8. Bruce Goldstein	Goldstein, Ackerhalt & Pletcher, LLP	No	10/27/2015
9. Robert M. Winter	RSP CHICAGO	No	10/26/2015
10. Brendan Lupetin	Meyers, Evans & Associates	No	10/26/2015
11. Shelley Wint	Folkman Law Offices, P.C.	No	10/26/2015
12. Amy Allbright	Commission on Disability Rights (CDR)	No	10/25/2015
13. Nicholas Kelley	Kotin Crabtree & Strong	No	10/23/2015
14. Julie Foster*	Public Interest Law Center	No - Referred	10/23/2015
15. David Ferleger	David Ferleger, Esq.	No	10/23/2015
16. David F. Goldstein	Brown Goldstein Levy	No	10/22/2015
17. Bruce Seidel	The Arc	No	10/22/2015
18. Warren A. Usatine	Cole Schotz P.C.	No	10/22/2015
19. Sandy Ballard	Dauphin County Bar Association	No	10/22/2015
20. Danna Rodrigues Casserly,	Pennsylvania Health Law Project	No	10/22/2015
21. Rahul Munshi, Esquire	CONSOLE LAW OFFICES LLC	No	10/21/2015
22. Barbara Kern	Neighborhood Legal services	No	10/21/2015
23. Mary Gay	PA Protection & Advocacy	No	10/21/2015
24. David Lewis	U.S. Government Accountability Office	No	10/19/2015
25. Sarah B. Dragotta	The Law Office of Sarah B. Dragotta	No	10/19/2015
26. David Millstein	MILLSTEIN & ASSOCIATES	No	10/16/2015
27. Nina T. Pirotti	Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C.	No	10/15/2015
28. Jack Londen	Morrison & Foerster LLP	No	10/14/2015
29. Ronece Martinez	Disability Rights Network	No	10/13/2015
• Note: Attorneys in	Bold acted as Advocates and disseminated	Plaintiff's Case To Other	Attorneys
ATTORNEYS CONTACTED PRIOR	TO FILING INITIAL MOTION FOR	APPOINTMENT OF	COUNSEL

1. Jonathan James	James, Schwartz & Associates, P.C.	No	12/11/2014
2. Faye Riva Cohen	Law Office of Faye Riva Cohen, P.C.	No	05/21/2014
3. Charles Weiner	Law Offices of Charles Weiner	No	04/21/2015
4. Ronece Martinez	Disability Rights Network	No	05/08/2014
5. Max S. Kennerly	<i>The Beasley Firm</i>	No	12/18/2013



ACLU Foundation of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513 ext 1

November 20, 2015

Richard Katz
3364 Parker Lane
East Stroudsburg, PA 18301

Dear Mr. Katz:

The American Civil Liberties Union of Pennsylvania's legal department has reviewed your complaint. Unfortunately we are unable to offer you legal counsel at this time.

The ACLU of Pennsylvania is a privately funded non-profit organization that seeks to preserve and extend certain constitutional principles, most of which are found in the Bill of Rights. ACLU carries out its mission through political lobbying and public education, and also by undertaking a limited number of legal cases in which a person's or persons' civil liberties have been violated. Our office, however, we have a small legal department, making it impossible to accommodate every individual seeking our assistance.

We recommend that you contact the following organizations:

PA Human Relations Commission (PHRC), Philadelphia
110 N. 8th Street,
Suite 501
Philadelphia, PA 19107
Phone: 215-560-2496
Website: <http://www.phrc.state.pa.us/>
Contact Person: Communications: 717-783-8266

Equal Employment Opportunity Commission (EEOC), Philadelphia
801 Market Street
Suite 1300
Philadelphia, PA 19107
Phone: 1-800-669-4000
Fax: 215-440-2606
Email: info@eeoc.gov
Website: www.eeoc.gov

Disability Rights Network of PA, Philadelphia Office
The Philadelphia Building
1315 Walnut Street, Suite 500
Philadelphia, PA 19107-4798
Phone: 215-238-8070
Fax: 215-732-3126
Email: drnpa@drnpa.org
Website: <http://www.drnpa.org>

Toll-Free Americans with Disabilities ACT (ADA) Information Line
Phone: 1-800-514-0301
Website: <http://www.ada.gov>

Although we cannot guarantee their assistance, they may be better able to help you with your complaint. We are sorry our office cannot do more for you.

Sincerely,

THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA